IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.4244 OF 2003

FIGHT FOR RIGHTS BAR OWNERS ASSOCIATION & ANR. ..Petitioners

Vs.

State of Maharashtra & Ors. ..Respondents

Mr.P.C.Kansara Advocate for Petitioners
Mrs. S.S. Bhende, A.G.P. for Respondent Nos.1 & 2
Mr.R.S.Apte Advocate for Respondent Nos.3 & 4

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 11TH MARCH, 2005.

P.C.

. Petitioners by the present Petition have impugned the decision of Respondent Corporation to levy a tax on entertainment in exercise of the powers conferred under Sub Section (1) of Section 149 and also Clause (b) of Sub Section (2) of Section 127 , Section 455 and Sub Clause (e) of Clause (7) of Section 457 of the Bombay Provincial Municipal Corporation Act, 1949.

. The case of the Petitioners is that once the State Government imposes a tax under the provisions of Bombay Entertainment Duty Act, 1923 it is not open to the Corporation to levy a tax for the same purpose. Reliance is also placed on Section 123(1). This is sought to be read with the provisions of

Section 148 of the Bombay Provincial Municipal Corporation Act, 1949.

. We have heard learned Counsel in so far as Section 148 is concerned. It is a power to exempt. That does not mean that it is a prohibition on the Local Body if otherwise authorised to levy a tax from levying a tax.

. That brings us to Section 13 which reads as under :

> . 13.(1) Notwithstanding anything contained in any law relating to a municipality, Prohibition local board, village panchayat or other local authority, no municipality, local board village panchayat or other local authority shall levy any tax on entertainment on which an entertainment duty is leviable under this Act after this Act comes into operation in the area within which the local authority concerned has jurisdiction.

. On a bare reading Section 13(1) it would show that if the State Government under the Act levies any tax on entertainment then the Local Authority set out therein have no power to levy the

tax on entertainment. Section 13(1) therefore is a power prohibiting levy of entertainment tax, under the provisions of the Bombay Entertainment Duty Act, 1923. Sub Section (2) however provides that not withstanding anything contained in 13(1) it is open to the Local Body to levy a tax at a flat rate per cinema show or performance on cinema shows or performances in accordance with the law enabling the imposition of such a tax. Therefore, whereas there is a bar on the Local Body in imposing the tax under Bombay Entertainment Duty Act, 1923, if State Government makes law, by virtue of sub section 13(2) itself it is still open to the Local Body to levy a tax if they are so entitled to under the provisions of any other law for the time being in force. It is not disputed that there is power under the Bombay Provincial Municipal Corporation Act,1949. Once that is the case we find that there is no merit in the Petition.

. In the light of that Rule discharged. Interim order stand vacated. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)